IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.228 OF 2005

Shri Ingalagi Jabbar Immamesaheb. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr.Vishwas S. Deokar for the Petitioner.
Mr. P. I. Khemani, AGP for Respondent No.1.
Mr. Nitin Jamdar for Respondent No.2.
.....

CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 16, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. In 1985, the Petitioner was appointed as a qualified Graduate Teacher in the Zilla Parishad Prashala at Madha in the District of Solapur. Vacancies are stated to have occurred in the post of Extension Officer (Education) in Class III Grade II. On 24th October 1989, the Chief Executive Officer of the Zilla Parishad,

Solapur (the Third Respondent to these proceedings), appointed the Petitioner in the existing pay scale as Extension Officer, Grade II on a temporary basis. The order of appointment stated that the appointment would be valid until a candidate duly selected by the Selection Board is made available. According to the Petitioner, the Chief Executive Officer of the Zilla Parishad is the Competent Authority to issue orders of transfer or promotion together with pay fixation and increments under the Maharashtra Zilla Parishad District Service (Recruitment) Rules, 1967. The Petitioner relies upon a communication dated 18th April 1994 of the Rural Development and Water Resources Department of the State Government (Exh.D) by which the power to make temporary appointments to the post of Extension Officer (Education) where duly qualified and suitable candidates are not available for regular appointment, have been vested in the Chief Executive Officer of the Zilla Parishad. The Petitioner submitted representations on 29th November 1999, 21st July 2004 and 24th December 2004 seeking the fixation of his salary and the grant of increments. Not having received any response thereto, the Petitioner has moved this Court in a petition under Article 226 of the Constitution.

3. An affidavit in reply has been filed by the Deputy Education Officer of the Zilla Parishad. It has been stated that the Petitioner was appointed as an Assistant Teacher on 19th January 1985 and his services were regularised with effect from 2nd April 1990. It has been stated that the Petitioner was transferred as an Extension Officer, Grade II on 24th October 1989 on a temporary basis till a candidate duly selected by the Divisional Selection Board became available. It has been stated that the services of the Petitioner have not been regularised by the State Government and in so far as the Zilla Parishad is concerned, it has forwarded a proposal to the Competent Authority.

4. An affidavit has been filed on behalf of the State Government by the Under Secretary to the Government in the Rural Development and Water Resources Department. In the said affidavit reliance has been placed on the aforesaid communication dated 18th April 1994 of the State Government and it has been stated that the Competent Authority in the matter of the grant of pay fixation and increments, is the Chief Executive Officer of the Zilla Parishad, Solapur.

5. The communication of Government in the Rural Development and Water Resources Department issued on 18th April 2004 reads as follows:

> "As per the provisions in Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967, the posts of Extension Officers (Education), not less than 75%, can be filled up by nomination and temporary transfer. That means 100% posts can be filled up in above manner. As per recruitment rules, the posts of Extension Officers (Education) upto 25% can be filled up by promotion. Therefore, if suitable candidates for the posts of Extension Officers (Education) to be filed up by promotion, are not available then, the Chief Executive Officer, Z.P. Ahemdngar is competent to fill up these posts by nomination and temporary transfer. Hence, under Rule 6(2) of the Maharashtra Zilla Parishad, District Services (Recruitment) Rules, 1967 the question of according sanction to fill up the posts of Extension Officers (Education) to be filled up by promotion, by nomination and temporary transfer does not arise at all."

A Division Bench of this Court, by an order dated 22nd September 2004 delivered in **Shivaji Shidu Patil vs. State of Maharashtra**, Writ Petition 7733 of 2004, disposed of a similar petition in view of the aforesaid communication dated 18th April 2004 by directing the Zilla Parishad to fix the pay of the Petitioners in that case who were also Extension Officers (Education). The direction was to fix the pay scale from the date of initial appointment and to release the arrears that are due and payable within a period of three months.

6. The Petitioner cannot, in our view, be deprived of the payment of salary and increments for the period during which he has worked as an Extension Officer (Education). While this would not confer upon the Petitioner a right to regularization, the Petitioner cannot be deprived of the emoluments to which he is entitled for the period during which he has worked, albeit in an acting capacity as an Extension Officer (Education). In view of the affidavit in reply filed by the State Government and Government's communication dated 18th April 2004 (Exh.D), it is clear that the Chief Executive Officer of the Zilla Parishad is the appropriate authority in the matter of pay fixation and the grant of increments.

7. In the circumstances, this petition is disposed of by directing the Chief Executive Officer of the Zilla Parishad at Solapur (the Third Respondent) to forthwith proceed to carry out the exercise of pay fixation and of determining the increments payable to the Petitioner from the date of his original appointment as Extension Officer (Education). This exercise shall be carried out within a period of two months from today and the arrears shall be paid to the Petitioner within a period of three months.

8. Rule is accordingly made absolute in these terms. In the facts and circumstances of the case, there shall be no order as to costs.

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